SUPREME COURT, U.S.
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No. 94-835

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

CROWN CORK & SEAL CO., INC.,
Petitioner,

v.

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF OF UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC IN OPPOSITION

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ARGUMENT

Respondent United Steelworkers of America, AFL-CIO-CLC ("USWA") submits this brief in opposition to the petition for certiorari filed by Petitioner Crown Cork & Seal Co., Inc. ("Crown"), in No. 94-835, which seeks review of the decision in *United Steelworkers of America v. Crown Cork & Seal Co.*, 32 F.3d 53 (3d Cir. 1994).

Contrary to Crown's contention, the question whether in private civil actions arising under the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. §§ 2101-2109, courts should follow the presumptive rule that state law limitations apply to federal causes of action without an express limitations period, or

instead, apply the six-month statute of limitations of section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) ("10(b)"), has neither "deeply" nor "irreconcilably split the Courts of Appeals." Pet. 5.

While the appellate court decisions rejecting Crown's view—the Third Circuit's decision in the instant case, and the decision of the Second Circuit in *United Paperworkers v. Specialty Paperboard, Inc.*, 999 F.2d 51 (2d Cir. 1993) —are final decisions, at this time there is *no* final resolution by any circuit upholding Crown's position. The Fifth Circuit, in an Order issued *sua sponte* on September 22, 1994, granted *rehearing en banc* of its decision in *Halkias v. General Dynamics*, 31 F.3d 224 (5th Cir. 1994), *reh. en banc granted*, 1994 U.S. LEXIS 26998 (Sept. 22, 1994), in which a majority of a three-judge panel of the Court, with Judge Wisdom dissenting, adopted § 10(b) as the limitations statute for WARN Act claims. In *United Mine Workers of America v. Peabody Coal Co.*, No. 93-6020 (6th Cir. Oct. 31, 1994), in which the Sixth Circuit relied on the Fifth Circuit's decision in *Halkias*, and held that WARN Act claims are subject to the six-month time limitation in § 10(b), a petition for rehearing and suggestion for rehearing *en banc* was filed November 11, 1994, and is currently pending before the Sixth Circuit. In addition, a case raising the issue of the statute of limitations for WARN Act claims is currently pending in the Tenth Circuit. *Frymire v. Ampex Corp.*, Nos. 94-1090, 94-1059 (10th Cir.). Accordingly, the circuit law on this issue is in flux and has not settled into a conflict posture. It would be premature for the Court to address this issue in the present circumstances.

This is especially true in view of the fact that this case comes before this Court in an interlocutory status. All that has occurred below is that the district court denied a motion for summary judgment in which Crown contended that this action was time-barred. After consideration of all of Crown's defenses and resolution of the case below,

if the statute of limitations issue remains a live issue, Crown will be free to seek *certiorari* at a time when it likely will be clear whether there is, in fact, a conflict between the circuits on this issue.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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